

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030911

ORDER GRANTING MOTION TO
DISMISS

On March 26, 2014, Student filed a Request for Mediation and Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Val Verde Unified School District (District) as respondent.

On March 28, 2014, District filed a Motion to Dismiss (Motion), alleging OAH does not have jurisdiction over the complaint which seeks to enforce a settlement agreement between the parties. On March 30, 2014, Student filed an Opposition to the Motion. For the reasons discussed below, the motion is granted.

APPLICABLE LAW

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the school district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised claims alleging the school district’s failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and this ruling was upheld on appeal. The *Wyner* court held that “the proper avenue to enforce SEHO orders” was the California Department of Education’s compliance complaint procedure (Cal. Code Regs., tit. 5, § 4650), and that “a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

In a limited exception to *Wyner*, *Pedraza v. Alameda Unified Sch. Dist.* (N. D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541) the United States District Court for the Northern

District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of a violation of a mediated settlement agreement where the parties acknowledged in the settlement that the services the District agreed to provide constituted a FAPE. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

District and Student entered into a settlement agreement during mediation on March 5, 2014. A copy of the settlement agreement is attached to District's Motion. The settlement agreement states District will provide independent educational evaluations (IEEs) to Student, but does not specify a deadline for providing the IEEs. The settlement agreement also provides that it is subject to approval/ratification by District's governing board or its lawful designee, and that the next board meeting was anticipated to be held on April 1, 2014.

In his complaint, Student alleges District denied Student a FAPE by its unreasonable delay in providing Student with the IEEs which it agreed to provide as part of the settlement agreement. Student seeks to have OAH order District to contract with the assessors, cooperate in authorizing the exchange of information and fund the IEEs. Student seeks compensatory services for the loss to Student as a result of District's delay.

In its Motion to Dismiss, District requests that Student's complaint be dismissed because OAH does not have jurisdiction to enforce settlement agreements. In his Opposition, Student acknowledges the parties entered a final settlement agreement. However, Student contends the settlement agreement is irrelevant to his claims and District's unreasonable delay in facilitating the IEEs constitutes the denial of FAPE.

As an initial matter, the case filed by Student is premature. The settlement agreement expressly provided that it was not operative until District board approval, which was not anticipated to occur until April 1, 2014. Neither party specifies whether board approval of the agreement was obtained. There was no deadline specified in the settlement agreement for completion of the IEEs.

Further, OAH is not the proper forum to resolve questions regarding an alleged breach of a settlement agreement. Although Student claims he is not seeking enforcement of the settlement agreement, that is exactly what he seeks. Student seeks to have OAH order District to contract with the IEE assessors, to cooperate in authorizing the exchange of information with the IEE assessors, and to fund the IEEs. The allegations are insufficient to bring this matter within the *Pedraza* exception to the general rule. The settlement agreement in this case does not contain any acknowledgment that its terms constitute a FAPE for Student. In fact, the settlement agreement specifically provides that the parties did not agree that placement or services contained in the agreement constituted a FAPE. The title of the agreement indicates its terms are a "compromise" between the parties, expressly providing it

could not be construed as an admission that any party acted wrongfully or that any party has rights against the other party. Simply phrasing the issues as a denial of FAPE, without more, is not enough to invoke the *Pedraza* exception. Issues involving a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure or a court of competent jurisdiction.

ORDER

District's Motion to Dismiss is granted.

DATE: April 08, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings